THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITIONS No.26242 and 26544 OF 2000 AND

WRIT PETITION NO.7050 OF 2001

07.11.2005

Between:

M/s.Fertilizers, Pesticides & Seeds Dealers Welfare Association, Suryapet and others

… Petitioners

AND

The Municipal Council, Suryapet Municipality

And others

… Respondents

COMMON ORDER:

Fertilizers, Pesticides & Seeds Dealers Welfare Association, Suryapet is the petitioner in W.P.No.26242 of 2000. Suryapet Kirana Merchants Association is the petitioner in W.P.No.26455 of 2000. The Cloth Merchants Association of Suryapet is the petitioner in W.P.No.7050 of 2001. In all the writ petitions, the resolution bearing MCR No.163, dated 27.3.1999 passed by the Municipal council, Suryapet is assailed as illegal and without jurisdiction. As the contentions raised in all the writ petitions are similar, these writ petitions are disposed of by this common order.

The petitioners contend that the retail business in fertilizers/pesticides/seeds, kirana business and/or cloth business are not the purposes for which a licence/trade licence is required under Section 263 read with schedule IV of A.P. Municipalities Act, 1965 (the Act, for short) and therefore, the respondent Municipality cannot, in law, insist upon the members of the petitioners associations to obtain a trade licence duly paying trade licence fee. However, the municipal council passed resolution on 27.3.1999 including kirana centers at item No.3, pesticide shops at item No.23 and cloth shops at item No.58 and indicated increased rate of licence fee. This, according to the petitioners, is illegal and arbitrary.

Learned Counsel for the petitioners in all three writ petitions, Sri S.Bharat Kumar, submits that fertilizer shops, kirana shops and cloth shops are not the items found in schedule IV and therefore, in exercise of power under Section 263 of the Act, the municipal council cannot impose any condition of obtaining trade licence. According to the learned Counsel, various entries mentioned in schedule IV to the Act cannot be enlarged by the municipal council. Strong reliance is placed on the judgment of this Court in **Satyanarayana Trading Co. v. Secretary & Special Officer**. Secondly, the learned Counsel submits that the power to amend schedule IV is vested in the Government under Section 328 of the Act and in the absence of

any such notification amending schedule IV, it is impermissible to the municipal council to include new trades and avocations at schedule IV for the purpose of Section 263 of the Act.

These writ petitions were admitted by this Court on 29.12.2000. Unfortunately, the municipal council, Suryapet has not so far filed any counter affidavit. Be that as it is, the learned Standing Counsel for Suryapet Municipality, Sri P. Radha Krishna, submits that all the kirana shops sell edible oils and therefore kirana business falls within entry (p) of schedule IV of the Act. He also placed reliance on entry (v) in support of the contention that trade in fertilizers, pesticides and insecticides being dangerous to human life entry (v) should be interpreted broadly so as to include fertilizer trade and according to the learned Standing Counsel, entry (s) which deals with selling cotton wholesale and retail takes care of cloth business. According to the learned Standing Counsel, prescribing or increasing the trade licence fee for various trades in which the members of the petitioners associations are engaged does not amount to amendment to schedule IV of the Act.

Section 263 of the Act lays down that the municipal council may publish a notification prohibiting any business enumerated in schedule IV except in accordance with the licence issued by the Commissioner. However, such power of the council is restricted only in relation to various purposes specified in schedule IV. There is no denial of the fact that as schedule IV exists on the statute book as on today, the fertilizers business, cloth business and kirana business are not explicitly mentioned and therefore the municipal council cannot be said to have any power. It is also not possible to enlarge the scope of various entries in schedule IV as held by this Court in **Satyanarayana Trading Co.** (supra).

I n **Satyanarayana Trading Co.** (supra), Vijayawada Municipal council issued a notification under Sections 260 and 263 of the Act levying licence fee in respect of several items mentioned in the schedule. Business in gunny bags and storage/sale of cement are also two categories of business, which were notified. The petitioners therein challenged the said notification before this Court contending that Section 263 read with schedule IV does not confer power on the municipality to levy or impose licence fee for carrying on business in gunny bags or for storage/sale of cement. Vijayawada Municipal council sought to defend the notification contending that gunny bag being the product of jute fall within the purview of entry (p). This Court did not agree with the submission and held that the entries cannot be enlarged. It was observed therein as under.

> For instance the item 'S' provides for a levy of licence-fee on selling or storing cotton wholesale or retain. It cannot be said that all products made out of cotton like clothing material including shirts, dhotis, sarees or readymade dresses will be covered by the said item 'S'. If the legislature intended that the products of jute should also be covered by item 'P' they would have expressly provided so by including jute products in item 'P'. As the provision relating to Section 263 read that schedule IV relate to levy of licence-fee they have to be strictly construed and unless the language of the aforesaid provision expressly or by necessary implication provide for levy of licence-fee, the scope of the items mentioned in Schedule IV cannot be

> enlarged or extended on the supposed intention of the legislature. In the instant case I do not think the work 'jute' can be read as jute and jute products as sought to be contended by the learned Government Pleader. I have therefore no hesitation in rejecting the contention of the learned Government Pleader that gunny bags which are products of jute are covered by item 'P'.

In view of the above binding precedent, the submission of the learned Standing Counsel cannot be accepted nor it is impermissible to read cloth business in entry (s) or fertilizers business in entry (v). Be it noted that entry (v) deals with industrial process, which is likely to be dangerous to human life, health or property and does not deal with the business in fertilizers or any dangerous trade as such.

Section 328 of the Act empowers the Government to alter, add or cancel schedules-I to IV of the Act. Sub section (2) thereof further requires the Government to introduce the notification altering the schedules before the legislative assembly during the next session of the assembly following the date of issue of notification. Therefore amending schedule IV is a legislative function, which cannot be usurped by the Municipal Council or the Municipal Commissioner. In respect of any item of business or category of business, which is not specifically found in entries (a) to (v) of schedule IV, Municipal council cannot impose trade licence fee unless and until proper procedure is followed under Section 328 of the Act. The possibility of the Government amending or altering schedule IV in accordance with the procedure contemplated under Section 328 – which is always available to them – does not in any manner validate the resolution of the municipal council, which is beyond its powers. Therefore insofar as these writ petitions are concerned, the petitioners are justified in contending that the business – which their members are carrying on – is not within any of the categories of the business in schedule IV of the Act.

In the result, for the above reasons, these writ petitions are allowed. There shall be no order as to costs.

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October 24, 2005. (**V.V.S.RAO,J**)

NOTE:

L.R. Copy be marked.

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